

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

BEAU JAMES MUSACCO,

Applicant,

v.

No. CV 14-0683 MV/GBW

GERMAN FRANCO, WARDEN, et al.,

Respondents.

ORDER

This matter is before the Court on Petitioner's Motion Requesting an Extension of Time to File the Petition for Writ of Habeas Corpus 2254. The Clerk opened a case under 28 U.S.C. § 2254 to accommodate filing of the motion. As grounds for the requested extension, Petitioner alleges that he had very little time to file a § 2254 petition after the New Mexico Supreme Court ruled on his certiorari petition. He also alleges that he needs time to compile his § 2254 petition, and he has very limited access to legal materials or photocopies. The motion asks for a 60-day extension.

Also before the Court, *sua sponte* under rules 4 and 11 of the Rules Governing Section 2254 Cases, is Petitioner's Petition Under 28 U.S.C. § 2254 for Writ of Habeas Corpus (Doc. 3), which he filed while his motion for extension was pending. The Court also considers Petitioner's Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 4).

Because Petitioner filed his § 2254 petition within the 60-day period that he had requested, the motion for extension of time is moot. No opinion is expressed or implied herein concerning the expiration date of the one-year limitation period applicable to Petitioner's § 2254 petition.

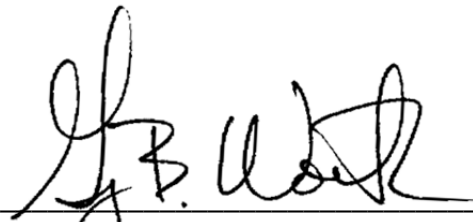
IT IS THEREFORE ORDERED that Petitioner's Motion for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (Doc. 4) is hereby GRANTED, and Petitioner may proceed without prepayment of costs or other fees or the necessity of giving security therefor;

IT IS FURTHER ORDERED that Petitioner's Motion Requesting an Extension of Time to File the Petition for Writ of Habeas Corpus 2254 is DENIED as moot;

IT IS FURTHER ORDERED that the Clerk is directed to forward copies of this Order and the petition and supporting papers and exhibits, if any, to Respondent and the New Mexico Attorney General;

IT IS FURTHER ORDERED that Respondent answer the petition within thirty (30) days from entry of this Order. Respondent's answer shall advise, but is not limited to, whether Petitioner has exhausted his state court remedies as to the issues raised in the federal petition. Respondent shall attach to its answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the sentencing court, the state district court, the state court of appeals and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings.

Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements, and opinions issued in Petitioner's state court post-conviction or appellate proceedings. The answer must describe the procedural history of each claim that Respondent contends is unexhausted and identify the State procedures that are currently available to Petitioner.



UNITED STATES MAGISTRATE JUDGE